October 3, 2001

Mr. Glenn A. Carpenter
Field Office Manager
BLM Salt Lake Field Office
2370 South 2300 West
Salt Lake City, Utah 84119

VIA CERTIFIED MAIL

RE: **APPEAL** and **PETITION FOR A STAY** by Interested Publics Southern Utah Wilderness Alliance and Western Watersheds Project for Grazing Permit Renewal for:

(EA) UT-020-00-12, UT-020-01-37 and UT-020-01-38; Findings of No Significant Impact, Notices of Final Decision for New Canyon, Woodruff Pastures, Big Creek, Cutoff Canyon, Stuart, Eastman, Middle Ridge, Deseret, East Woodruff, Meachum Canyon, South Woodruff, Sage Creek, Duck Creek, Rabbit Creek, Dry Basin and Bear Lake Allotments.

Dear Mr. Carpenter,

The Southern Utah Wilderness Alliance (SUWA) and Western Watersheds Project (WWP) hereby file this **APPEAL** and **PETITION FOR STAY** of the Bureau of Land Management's (BLM) term grazing permit renewal for the [INSERT] pursuant to 43 C.F.R. § 4160.4.

SUWA and WWP, on behalf of their members, are interested publics on each of the allotments. SUWA and WWP have filed a Protest of the EAs and the related decisions pursuant to 43 C.F.R. § 4160.2. This Appeal is timely filed pursuant to 43 C.F.R. § 4160.4.

The EA's are legally inadequate and fail to fulfill the BLM's statutory and regulatory duties, *inter alia*, to restore and sustain ecosystem values and balance resource benefits and harms associated with livestock grazing impacts. Thus, SUWA and WWP file this **Appeal** and **PETITION FOR STAY** for the same reasons given in their Protest (attached) and as further explained below.

Basis for Appeal

1. The BLM Fails to Comply with the Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

For several reasons, the BLM fails to meet its regulatory obligations under 43 C.F.R. § 4180 in the EAs. Among the requirements of The Fundamentals of Rangeland Health are that "Watersheds are in, or are making significant progress toward properly functioning condition…" and "Habitats are, or are making significant progress towards being restored or maintained ….". Four Standards were established to assure that these Fundamentals were achieved (BLM 1996).

Standard 1 requires that upland soils exhibit permeability and infiltration rates that sustain or improve site productivity as indicated by sufficient cover and litter, absence of excessive erosion and the appropriate amount, type and distribution of vegetation reflecting the presence of the Desired Plant Community (DPC). While PFC assessments for uplands were provided for 10 out of 16 of the allotments,

they were conducted on areas of low gradient and entirely avoided areas of steeper slopes which are highly susceptible to erosion by water, are adjacent to streams and water sources and are subject to heavy livestock use, leading to siltation of streams and impairment of aquatic habitat.

The Soil Survey of Rich County, Utah (USDA, 1980) shows that many of the soils in the project area are highly susceptible to water erosion and that many of the vegetation and soil types are poorly suitable for livestock grazing due to low forage production or poor suitability for seeding. Specific analysis of these factors was provided in our protest. The EAs have not taken this information into account in determining either the appropriateness, or suitability of grazing livestock in these allotments or in determining the impacts of livestock on the soils. The Randolph Management Framework Plan (BLM 1980) stated that BLM should, "Graze all areas in Rich County suitable for livestock grazing. Carrying capacities for each allotment will be based upon the forage production on suitable acres within each allotment." Suitability, carrying capacity, vegetative production and stocking rates for livestock have not been determined for these allotments. Based on the data provided in the BLM PFC assessments, actual grass cover when compared to potential was about 51% of potential with many sites being only a small fraction of potential. Table 1 provides a summary of data extracted from those PFC Assessments.

Table 1. Summary of BLM Upland PFC Assessment Data

Allotment	Grass Cover % (Range) and Mean	Potential Grass Cover % (Range) and Mean	Actual Grass to Potential %	Bare Ground % (Range) and Mean
Sage Creek	(22 – 50) 37.8	(50 – 60) 55.8	67.7	(5 – 38) 22.1
Middle Ridge	(25 – 30) 27.5	(50 – 80) 65	42.3	(5 – 25) 15
Eastman	(15 – 33) 22.6	(40 – 65) 50	45.2	(3 – 20) 11
South Woodruff	(23 – 45) 32	(50 – 80) 62.5	51.5	(1 – 20) 7.5
Meachum Canyon	(12 – 55) 37.3	(50 – 65) 60	62.1	(12 – 50) 27.3
Deseret	(2 – 60) 40.4	(50 – 85) 60	67.3	(4 – 56) 26.7
East Woodruff	(10 – 50) 30	(50 – 60) 55	54.5	(32 – 50) 41
Bear Lake	(14 – 45) 29.5	(60 – 65) 62.5	47.2	(10 – 16) 13
Dry Basin	(5 – 22) 15.7	(45 – 50) 48.3	32.5	(4 – 30) 19.7
Duck Creek	(5 – 45) 29	(45 – 78) 56.6	51.2	(8 – 20) 12.6

Overall Mean = 52.1%

The PFC Assessments indicated that of 37 sites assessed, most were in proper functioning condition for soil and watershed attributes with a portion "at risk". Yet, evidence of water erosion such as flow pathways, pedestals, terracettes, lack of ground covering vegetation in shrub interspaces, and gullies were noted throughout the Assessments. The EAs noted overutilization in sage grouse habitat as a problem (Table 2) and that significant areas of critical deer winter range were in poor condition. The PFC Assessments were completed under the current grazing system (seasons and stocking rates) and indicated numerous problems under the status quo (No Action Alternative) such as "Sufficient residual vegetation and litter on both upland and riparian sites to protect soil stability and hydrologic function may be limited." A number of other limitations on ecological condition, plant and soil productivity and invasion of exotic species were listed. It seems contradictory that the PFC assessments found properly functioning conditions for uplands across the landscape when they were conducted under the existing grazing circumstances that lead to the descriptions of degradation provided under the "No Action" Alternative. This, while ignoring livestock impacts to slopes and highly erodible soils. This calls into question the validity of the assessments. Even the description of the "Proposed Action" indicates that

these attributes of soil stability, hydrologic function, ecological function "may" be enhanced. There is no determination that, in fact, conditions will not continue to deteriorate under the Proposed Action.

The scientific literature clearly ties significant erosion to overgrazing by cattle. Even under moderate stocking rates, grazing substantially contributes to the deterioration of soil stability in deserts (Warren et al. 1985), thus leading to increased soil erosion. Soil erosion is further exacerbated by increased surface runoff triggered by loss of vegetative cover and litter (Ellison 1960), both of which have been shown by numerous studies to be reduced by livestock grazing. Numerous studies have observed severe erosion in the western United States when comparing heavily grazed areas to ungrazed sites (*e.g.* Cottam and Evans 1945, Gardner 1950, Lusby 1979, and Kauffman et al. 1983). Furthermore, there are a number of extensive literature reviews on this topic that describe the indisputable impact of livestock grazing on soil stability and erosion (*see* Gifford and Hawkins 1978, Fleischner 1994, Trimble and Mendel 1995, and Jones 2000).

The documented significant erosion and erosion potential present in these allotments demonstrates BLM is not in compliance with the Standards and Guidelines. Yet, the agency ignores and fails to act on this determination as required by regulation. As the Fundamentals of Rangeland Health make clear, where the BLM makes a determination that upland soils are not properly functioning, the agency must immediately modify grazing management to ensure that the the areas will make sufficient progress toward becoming suitably functional. 43 C.F.R. § 4180.1. Importantly, this action must take place "as soon as practicable but not later than the start of the next grazing year . . .." *Id.* Yet the BLM unlawfully fails to "take appropriate action" to achieve the appropriate conditions and to conform to the relevant guidelines. No information is provided to show that the Proposed Action requiring upland utilization standards will result in improvement. No suitability determination for slopes and sensitive soils has been provided to show how management will protect these sensitive areas from further degradation.

Standard 2 requires that riparian and wetland areas are in properly functioning condition as indicated by streambank vegetation, stream bank cover sufficient to protect against erosion, vegetation reflecting the DPC and other factors. As mentioned, six of the sixteen allotments were not assessed during BLM PFC Assessments. Futher, five of the allotments assessed were declared to contain no riparian or wetland areas. Wetland or lentic areas were not assessed on any allotments. Our protest documented that wetland areas exist, but in areas accessible to livestock are severely degraded. The lack of wetland areas, seeps and springs across these allotments was not addressed. The construction of water developments and livestock grazing may have dewatered these areas and subsequently they have lost their function. The past and current impacts to these resources from water developments for livestock were not addressed.

For those riparian areas assessed by BLM, 9 of 13 were found to be Functional-At-Risk or Non-Functional, with the remaining four in PFC. One of the four PFC sites was on the North Fork of Sage Creek in the Highway right-of-way and inaccessible to cattle. While BLM has proposed to set utilization standards on riparian areas in some allotments they have failed to implement standards for other riparian areas, wetlands, seeps and springs. The EAs note that "The opportunity for regrowth diminishes in mid-July through October which contributes to at risk circumstances on riparian areas." Yet grazing seasons are set from mid-May through most of September on most allotments. This indicates that unless livestock are removed before mid-July, even though utilization standards are implemented, regrowth may not occur. The report (Carter and Chard, 2001) accompanying our protest presented our assessment of riparian function at 19 locations in these allotments. Only one site was found to be in properly functioning condition. This was a spring from which livestock were excluded by fencing and sediment

inputs from grazed watersheds were not a factor. All other locations were either directly impacted by livestock grazing and trampling or indirectly affected by sediment inputs from eroding uplands impacted by livestock grazing.

The protest attached to this Appeal and Petition for Stay provide a review of pertinent science regarding the effects of livestock on riparian areas, water quality and aquatic biota. The BLM has ignored the science related to the impacts of livestock on riparian and wetland areas, their water quality and biota. Further, BLM has ignored Executive Order No. 11990 which calls for protection and improvement of riparian and wetland areas.

Standard 3 requires that desired species, including native species are maintained as indicated by frequency, diversity, density, age classes and productivity of desired native species; habitat connectivity, re-occupation of disturbed areas and the appropriate amount and types of vegetation necessary to support ecological processes.

In their PFC Assessments, BLM assessed 10 allotments of the 16 being proposed for permit renewal. Of 37 sites assessed on those allotments, 18 were found to be "Intact" and 19 to be "At Risk" for biotic integrity. Observations of juniper encroachment, cheatgrass, thistle, lack of grasses, decadent sagebrush were all listed concerns during the assessments. Further, Table 2 above shows that the grass composition is only about 50% of potential across the allotments assessed. Specification of upland utilization standards for "key species" is a general criteria established for the Proposed Action for upland herbaceous species. However, effective monitoring of utilization is a time-consuming process that will have to occur across large land areas. The proper design and conduct of this monitoring was not described in terms of locations, vegetation types, proximity to water, slope, key species and their representation. Enforcement of standards was not described. Without any design to adequately represent each allotment and control overuse on sensitive areas or to prevent large areas in proximity to water from becoming sacrifice areas, the vague reference to utilization does not offer a cure for the current "At Risk" condition of these lands. As described under Standard 1 above, BLM can provide no assurance that the proposed standard will do other than possibly, or "may" enhance conditions. There is no schedule for achievement of the Standard.

Further, BLM has failed to comply with Executive Order No. 13112 which directs agencies of the Federal Government to use relevant programs and authorities to: (1) prevent the introduction of invasive species; (2) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (3) monitor invasive species populations accurately and reliably; (4) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (5) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (6) promote public education on invasive species and the means to address them; and (7) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States. BLM has failed to provide any analysis of the relationship of livestock grazing to the noxious weed problem in these allotments and has failed to provide any enforceable proposed action to alleviate this infestation.

Standard 4 requires that BLM will comply with water quality standards established by the State of Utah and activities on BLM lands will fully support the designated beneficial uses described in the Utah Water Quality Standards for surface and groundwater as indicated by measurement of nutrient loads, total dissolved solids, chemical constituents, fecal coliform, water temperature and other water quality parameters as well as macroinvertebrate communities that indicate water quality meets aquatic objectives.

In all the EAs, BLM has failed to present monitoring data, failed to rely on current science where data is lacking to determine whether livestock impact water quality and aquatic biota and has universally claimed that water quality meets standards. The analysis provided in our protest clearly shows there is little or no monitoring for surface water bodies within the allotments and that the Bear River and Saleratus Creek, which receive water from the allotments are impaired for dissolved oxygen. Livestock-related wastes such as sediment, organic matter and nutrients are related to lowered dissolved oxygen. Further, Executive Order No. 12088 requires Federal agencies to comply with local standards and limitations relating to water quality. These standards and criteria were not discussed other than the above assertion, without any supporting data or evidence of monitoring, that standards are met. See the attached protest comments and literature. Carter and Chard (2001) provided results of stream substrate sediment samples that showed the streams were degraded by sediment from eroding streambanks and watersheds.

In the **MFP (Decision Statement Water 1.1),** BLM requires that existing water quality in the Randolph Planning Unit be maintained by implementing a program to monitor water quality as site-specific water quality monitoring needs are identified for activities which affect water quality, where cooperation with state and local agencies is needed and by sampling BLM's water information network every five years to monitor water quality. Water quality data needs and funding dictate that future sampling be done on the network every five years or as specific problems and coordination needs arise. In spite of a commitment to monitor water quality, BLM has refused to use current science on livestock impacts to water sources and has failed to provide any documentation that water quality in, or related to these allotments meets water quality standards or will do so under the Proposed Action. BLM did state in their EAs, however, that additional water quality and macro-invertebrate monitoring programs are warranted, which lends support to the argument that livestock are impairing water quality and aquatic biota.

Despite the National Environmental Policy Act, 42 U.S.C. §§ 4321 to 4370d (NEPA), requirement of well informed decision-making based on updated information, the BLM fails to determine the **current** condition of uplands, vegetation, wildlife, riparian areas, wetlands and water quality. This failure violates BLM's obligations under NEPA and 40 C.F.R. § 4180 to determine the **actual** condition of the grazed lands and to protect ecosystem values threatened by grazing practices.

To the extent that BLM produces assessments, their reliance on visual upland and riparian assessments is inadequate to determine compliance with the Fundamentals and Standards and Guidelines (43 C.F.R. § 4180; BLM, 1996). This is because these assessments focus on the physical condition of the land and the watershed and do not include adequate assessment of ecological processes or wildlife habitat and ignore sensitive soils in their analyses. Without this analysis, the BLM cannot determine if the condition of the land within these allotments is meeting the required conditions and therefore the BLM cannot fulfill its regulatory obligations. Furthermore, these assessments are overly subjective and fail to fully evaluate the current condition of the land based on comparisons with intact ecosystems or DPC. No review of scientific literature or presentation of monitoring data is provided to justify the findings of no significant impact. Only with these kinds of information can the agency assess the health of the land in its current state. The **MFP (Decision Statement Range Management 3.9)** stated, "Grazing administration including use supervision, trespass control, and monitoring utilization and trend studies will receive top priority for funding within the Range Management program. If full funding is not available for these activities, funds will be diverted from other range activities…" The Rationale states, "A major cause, if not the main cause of range deterioration in the past has been inadequate administration by BLM, including trespass control. It does not do any good to force ranchers to take reductions if a lack of proper administration allows the condition of Public Land to continue to decline. In addition, some of the other

Range Management Decisions depend on studies, which will have to be continued into the future." Here, BLM clearly has emphasized the importance of monitoring data including utilization and trend to determine management. None of this information was analyzed or provided in the EAs.

The EAs fail to satisfy BLM's obligations under the Standards and Guidelines to determine a Desired Plant Community (DPC) and assess the impacts of livestock grazing on the DPC. As part of a determination of DPC, the BLM must ascertain the condition and quantity of native plants and microphytic soils necessary to achieve the DPC and to achieve and sustain properly functioning ecological processes on the land. Because the EA does not include this necessary analysis, it is inadequate to serve as the basis for well informed decision-making and fails the BLM regulatory obligations.

The BLM has failed to determine that all other portions of these allotments are in compliance with Fundamentals of Rangeland Health and Standards and Guidelines and delays assessments in some cases for many years. The current degraded condition of the soils, vegetation, and riparian areas indicate that the condition of these allotments does not comply with these requirements and regulations. BLM has failed to address the state of cryptobiotic soils on these allotments. In fact, BLM has failed to even acknowledge either the presence or importance of cryptobiotic soil to watershed and ecosystem function and the negative impact of grazing on these ecosystem components.

2. The BLM Fails to Determine if Grazing Management is Causing or Contributing to a Violation of Utah Water Quality Standards.

Despite being required to do so by the Clean Water Act and the Fundamentals and Standards and Guidelines, the BLM completely fails to determine if the waters of the riparian areas within the relevant allotments comply with Utah Water Quality Standards and whether grazing practices impact water quality there. As noted above, no data was provided in the EAs regarding water quality and only assertions were made as stated above that water quality meets standards. Here BLM has ignored the large body of science regarding the impacts of livestock on water quality (see protest comments and attached report). Yet, the Record of Decision for the SLFO's *Pony Express Resource Management Plan (RMP)* provided the following statement regarding water developments, "When practical, overflow ponds at water developments will be at least 100 yards from livestock watering sources to allow for a cleaner water source for wildlife." Further, in its **MFP (Decision Statement Wildlife 1.1)**, BLM states, "Streams and aquatic-riparian habitats have been identified in the URA as areas of critical environmental concern, crucial habitat, and conflict areas with livestock grazing. Habitat and fisheries currently exist in poor condition in all streams." The Rationale for this decision goes on to state, "Water quality is being adversely affected by livestock induced soil erosion and elevated bacterial counts." Finally, BLM states in its Rationale that "The Big Creek administrative study has shown that elimination of livestock from riparian zones will improve aquatic-riparian habitat from poor to good condition and increase the stream fishery." These statements and the literature clearly indicates that livestock degrade water quality, yet the EAs refuse to address this fact in the proposed management to either protect water quality or address water quality impacts resulting from water developments and livestock use. The failure to address water quality impacts fails to meet the intent of NEPA to provide a detailed and integrated analysis of impacts, i.e. a "hard look". Further, other than stating it is warranted, BLM proposes no monitoring of water quality to ensure that the Fundamentals and Standards are met even though the MFP requires it be done. The analysis provided in the accompanying protest and the comments provided above clearly show that the streams on these allotments have undetermined water quality and that the receiving waters from these allotments are degraded. BLM also fails to address water quality in intermittent drainages, which are also

subject to the State of Utah water quality standards (Utah DEQ, 2001). BLM must take concrete steps to guarantee that livestock grazing does not adversely impact water quality or contribute to impairment of the beneficial uses of these waters. Furthermore, the BLM should ensure that its management of livestock grazing functions so as to comply with all aspects of Utah's Water Quality Standards, including the narrative and anti-degradation standards.

3. The EA Completely Fails to Comply with the Federal Land Policy and Management Act and the National Environmental Policy Act.

The BLM must manage public land uses, including grazing, in accordance with the multiple use objectives of the Federal Land Management and Policy Act, 43 U.S.C. §§ 1701-84, (FLPMA). Furthermore, as established by the *Comb Wash* decision, *National Wildlife Federation v. Bureau of Land Management*, 140 IBLA 85 (Aug. 21, 1997), the most recent environmental analyses for the Randolph Planning Unit (MFP, 1980) and the Randolph Grazing ES (USDI-BLM 1980)"do[] not contain the detailed information necessary for determining whether or not to graze," any given allotment. (140 IBLA 100). Therefore, these analyses do not include the relevant balancing of resource values as required by FLPMA and that analysis must be done at the allotment level.

In addition, the Supreme Court of the United States recently held, in Ohio Forestry Association v. Sierra Club, 523 U.S. 726 (1998), that a Forest Plan is only a preliminary blueprint rather than a final agency action, and that suitability determinations made in a Forest Plan may be, and should be, reconsidered when the Plan is implemented through site-specific actions.

Similarly, when the BLM undertakes particular actions, such as making decisions on permit renewals, the agency must apply FLPMA's resource balancing on the site-specific level. This is particularly true because the MFP is outdated and much relevant information has become available since its issuance. Despite this requirement, the BLM has not completed FLPMA balancing analysis in the EAs and has thereby neglected its statutory and regulatory duties. As a result, the EAs must be rejected as inadequate.

The BLM must also complete a Resource Area-wide Environmental Impact Statement (EIS) to analyze grazing impacts on the area's resources and to inform its management thereof. Current analysis for the Salt Lake District, conducted pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 to 4370d, (NEPA), is outdated and does not include the relevant balancing of resource values as required by FLPMA. On-the-ground realities and the relevant legal authority dictate that an updated analysis must be completed on a resource area-wide basis. The concurrent issuance of dozens of grazing permits under EAs for Tooele, Box Elder and Rich Counties on over 1,000,000 acres has made the need relevant to judge both the context and intensity of livestock grazing and its impacts on the resources throughout the Salt Lake District.

The need for such a Resource-Area-wide approach is evident in the EAs. For example Table 2 states:

- "Refer to the analysis in the Randolph Grazing ES (USDI-BLM 1980). MFP forage allocations would be met. The proposed action would have a 'minor' impact and would not negatively alter wildlife species habitat enough to change the species current vigor or population size (ES Page 3-42). Existing seasons of livestock use are acceptable (Randolph HMP 1982). The HMP found that 2995 (9%) acres of the critical deer winter range was in 'poor' condition. Numerous

vegetation manipulations to change the dominant crested wheatgrass seedings to include interseedings with wildlife preferred species have been completed."

- "Sage grouse habitat occurs throughout the analysis area. The HMP documented nine breeding and nesting complexes occur within the area and were found in poor-fair condition due to low sagebrush/grass/forb densities and overutilization. Strutting grounds do occur and are in the process of being redocumented and studied by the BLM and UDWR."
- Bonneville cutthroat trout may occupy habitat in sections of streams at certain times of the year. There are approximately 40 species of migratory birds that occupy the sagebrush steppe ecosystem during some of their life history. The proposed action or alternatives would not result in a 'Take' on Migratory Bird species covered under the Migratory Birds Treaty Act of 1936."

The **MFP (Decision Statement Wildlife 2.4)** also states that "The stated purpose of this decision is to eliminate 'significant competition' for quality and quantity of forage between livestock and deer throughout grazing allotments. Steps including initiating: (1) livestock management programs including proper stocking rates based on current range survey data, condition and trend data and actual use surveys…"

These statements relative to the Rich County EAs do not quantify the available habitat for Threatened, Endangered or Special Status species. They do not provide a basis to judge the consequences of livestock grazing in Rich County to these species and especially, the cumulative impacts of these actions across three counties are lost in the failure to address all these current actions at one time and in a single analysis. The statement from the MFP clearly identifies the need to collect data to determine proper stocking rates for livestock and determine actual use. Clearly this has not been done. Further, correspondence recently received from the SLFO (letter dated 9/24/01) indicates BLM is considering amendments to its land use plans for Box Elder and Rich Counties to add a Northern Rockies Lynx Amendment for protection of the Canada Lynx, recently listed as Threatened under the Endangered Species Act. This action alone demonstrates the need for the Proposed Actions to be addressed in an EIS that covers the entire Resource Area of the SLFO.

The forage analysis provided above under Standard 1 indicates that the herbaceous plant community represented by the grass component is much reduced from its potential on a landscape scale as well as at particular sites. The report accompanying that protest (Carter and Chard 2001) showed that the available forage occurring on these allotments in late May and early June (two to three weeks after the beginning of livestock grazing seasons) was less than half that which should be produced under drought conditions. This indicates a much reduced forage base as well. The lack of any analysis of forage availability and utilization leaves unknown what, if any, forage is provided for wildlife and watershed function. The issuance of numerous grazing permits concurrently across three counties without an adequate analysis of wildlife impacts on a site-specific and regional scale can fail to determine impacts when they occur. Moreover, the EA provides no cumulative impact analysis of livestock grazing on wildlife on a landscape basis and there is no current Resource Area-wide analysis of these impacts.

The potential impacts of cattle grazing on elk and deer must not be dismissed by the BLM, as there is a strong precedent, as cited in the scientific literature, for significant deleterious impacts on these animals due to grazing. Cattle have been shown to impact elk and deer through habitat alteration and behavioral avoidance (Kraussman 1996). Potential competition between elk and cattle is greatest on winter range. If such areas are grazed heavily by cattle in the summer or fall, insufficient forage will remain for elk in the winter (Nogle and Harris 1966) - a problem that is exacerbated in arid sagebrush ecosystems (Hobbs et al. 1996). It is estimated that perennial grass utilization by cattle of only 25 to 30%

in arid western rangelands will trigger forage competition with elk (Kraussman 1996). Many studies have demonstrated that elk avoid or decrease their use of areas grazed concurrently by cattle (Arizona-Wallace and Kraussman 1987; Idaho-Yeo et al. 1993; Frisna 1992). Mule deer have been similarly shown to avoid areas with high concentrations of cattle (Wallace and Kraussman 1987; Griffith and Peek 1989; Loft et al. 1991).

The BLM has no idea whether livestock grazing adversely impacts these large animals. This is because the agency improperly focuses on one segment of the public lands at a time and then dismisses potential impacts. Given this strategy, illegal under NEPA, the BLM will never determine the impacts of grazing on large mammals or wildlife in general. Similarly, the agency's analysis with regard to impacts on small mammals, birds, reptiles and insects is lacking. As NEPA mandates, the BLM cannot dismiss and refuse to analyze impacts that in isolation may be insignificant but may be cumulatively significant. For exmple, the total forage allocation for the allotments in these EAs is 24,216 AUMs. Holechek et al (1998) gives wildlife equivalents in AUMs as (1 elk = 0.7 AUM, 1 deer = 0.15 AUM). Using those figures, the AUMs allocated to livestock could provide forage for 2,882 elk or 13,453 deer, yet little forage is allocated to these animals or the numerous insects, small birds or mammals that are displaced by livestock. As a result of this inadequacy, the EA is arbitrary and capricious.

BLM should conduct an area-wide and site-specific analysis to determine the capability and suitability of lands proposed for grazing permit renewal. This analysis should include such factors such as steepness, soil type, susceptibility to erosion, low precipitation, distance to water, forage availability, and ground cover. In addition, an economic analysis that balances competing economic factors, including costs to ecosystem values and the cost of managing allotments, to determine the economic consequences of selecting livestock grazing over other uses of BLM lands should be included. BLM is not free under FLPMA and *Comb Wash* to ignore these factors in determining whether or not the lands should be grazed.

4. The BLM Fails to Analyze the Impacts of Livestock Grazing on Microphytic Crusts.

The EA's have failed to address or even acknowledge microphytic soils and their importance to ecosystem function or that livestock grazing affects cryptobiotic soil through trampling and compaction. In the PFC Assessments accompanying the EAs, notes were made regarding the presence of biological crusts with two sites noted to have 10% and 12% ground cover by crusts. The remainder of the sites surveyed had either a trace or no notation regarding the status of these important ecosystem components. Carter and Chard (2001) found an average of 1.6% crust at sites surveyed within these allotments. This indicates there is a potential for greater extent of crust than is present, but no discussion regarding the lack of biological crusts was provided nor was any analysis provided as to the goals for restoring crusts and how the Proposed Action would accomplish this. The agency's failure to analyze the affects of grazing on cryptobiotic soil is a violation of NEPA's requirement to assess the environmental impacts of the proposed action and FLPMA's resource balancing mandate. Further, the BLM does not address studies that uniformly conclude that microphytic crusts are central to the ecological processes protected by the Fundamentals and Standards and Guidelines. Nor does the BLM acknowledge numerous studies that have found that livestock grazing indisputably causes severe damage to these fragile crusts (Kleiner and Harper 1972, Johansen et al. 1981, Anderson et al. 1982, Brotherson et al. 1983, Rasmussen and Brotherson 1986, Jeffries and Klopatek 1987, Beymer and Klopatek 1992). The preservation and restoration of these soils is of paramount concern exactly because these are critically important components in arid ecosystems because of their role in soil stabilization, and both the nutrient and

hydrologic cycles, and these, in turn, are the very values that FLMPA, the Fundaments and the Standards and Guidelines require the BLM to protect and restore through its management of the public lands.

These failures are significant given that microphytic crusts are one of the most ecologically important microhabitats in arid and semi-arid environments. *For example*, Belnap (1995), *Surface Disturbances: Their Role in Accelerating Desertification*, Environmental Monitoring and Assessment, Vol. 37, 39. These soils improve water infiltration and evaporation characteristics, increase resistance to erosion, and play a key role in the cycling of essential nutrients such as nitrogen. *Id.* Livestock grazing destroys microphytic soils, thus affecting rangeland health by depriving plant life of these ecological benefits as well as by increasing vulnerability to desertification. Johansen (1993), *Cryptogamic Crusts of Semiarid and Arid Lands of North America*, J. Phycol. 29, 140 (*and papers cited therein*). *See also* Garcia-Pichel and Belnap, *Microenvironments and Microscale Productivity of Cyanobacterial Desert Crusts*, J. Phycol. 32, 774-782 (1996); Belnap and Gillette, *Disturbance of Biological Soil Crusts: Impact on Potential Wind Erodibility of Sandy Desert Soils in Southeastern Utah*, Land Degradation & Development, Vol. 8m 355-362 (1997); Belnap and Harper, *Influence of Cryptobiotic Soil Crusts on Elemental Content of Tissue of Two Desert Seed Plants*, Arid Soil Research and Rehabilitation, Volume 9, pp. 107-115 (1994); United States Department of Agriculture, *Introduction to Microbiotic Crusts* (July 1997).

The failure of BLM to address these soils does not excuse BLM from its obligations under the Standards and Guidelines to determine a DPC for any given area and assess the impacts of livestock grazing on the DPC. As part of a determination of DPC, the BLM must determine the condition and quantity of microphytic crusts necessary to achieve the DPC and to achieve and sustain properly functioning ecological processes on the land. Once the agency determines the desired condition and quantity of these soils, it should compare this DPC to the present condition of the land and, where indicated, take steps to restore the DPC.

Furthermore, BLM must consider cumulative impacts to microphytic soils as part of its NEPA obligations. Such an analysis must determine the cumulative impacts of past, present and reasonably foreseeable actions, including the impact of past and present grazing practices, road building, ORV use and other trampling activities on these crusts. To complete such an analysis, the agency must make a good faith effort to compare the present and past condition with the desired condition of these crusts and thereby quantify the total impacts of past grazing practices on these soils. Without such data, the agency cannot undertake adequate cumulative impact analysis. Where there is uncertainty, the agency must make a good faith effort to predict and model its analysis.

As a result of dealing inadequately with microphytic soils and their central role in ecosystem health and maintaining properly functioning ecological processes, the EA does not comply with NEPA and FLPMA. The document cannot serve as a basis for well informed decision-making regarding ecosystem values and cannot satisfy BLM's regulatory responsibilities.

5. In the EAs, the BLM Fails to Analyze a Range of Reasonable Alternatives to the Proposed Activity.

BLM has failed its obligations under the NEPA to analyze a range of reasonable alternatives to the proposed activity. By merely relying on the MFP and ES for this analysis, the EA fails to take an updated, site-specific and hard look at alternatives to current grazing practices. The *Comb Wash* decision established that tiering to the land use plans and ES alone is insufficient for FLPMA purposes. For

similar reasons, the BLM may not tier the EA to the outdated MFP and ES for the Randolph Planning Unit for the purposes of meeting the requirements of NEPA generally, including to meet its obligations to analyze a range of alternatives.

In the EAs, the BLM effectively fails to analyze any alternative other than the status quo. Thus, the agency fails to develop a range of alternatives to the proposed action and fails to determine the environmental impacts of alternatives requiring, *inter alia*, reduced AUMs, reduced grazing seasons, reduced utilization, restrictive rotation schemes and other management practices readily available to it. A proper formulation and analysis of alternatives is particularly warranted given the BLM's determination of the deteriorated condition of the lands within the allotments. Without formulation and examination of alternatives, the EA is inadequate. The agency's consideration of the no-action alternative is so inadequate as to fail to represent a true alternative to current grazing practices.

The agency fails to consider extensive studies that show that long term and very long term rest will benefit a host of ecosystem values including wildlife habitat, water quality, soil stability and ecological processes and biodiversity. As mentioned above, the agency's failure to have test plots, exclosures, evaluation of current science or some other reference point from which to compare areas that are grazed with areas that are not (and have not been for an extended period of time) prevents it from realizing the true benefits of discontinuing livestock grazing. It bears notice that in the MFP, BLM required the construction of exclosures within all allotments to provide positive benefits to eight species of ground and shrub nesting passerine birds, sage grouse, marsh hawks, short-eared owls, rabbits and non-game mammals and reptiles and to provide study plots for evaluating utilization, succession and production. Two major considerations arise from this requirement: First, BLM has identified benefits from excluding livestock. This demonstrates that livestock are having adverse impacts on wildlife. Second, the expressed need for data from exclosures to allow determination of utilization, succession and production shows that BLM has no idea what the impacts of current and proposed levels of livestock grazing are.

Similarly, the BLM's reasons for refusing to analyze a no-grazing alternative to the proposed action are inadequate, limited to citing the Taylor Grazing Act, FLPMA, PRIA and the Code of Federal Regulations as all providing for livestock grazing of public lands. BLM fails to note, however, that these acts require determinations of suitability and protection of resource values. BLM also gives the reason that discontinuing grazing would impose an extreme financial hardship on the permittees.and would not conform to the land use plan. Yet, BLM provides no analysis of economics or alternative uses foregone and their values. It provides no analysis to show what the dependence of permittees is on BLM lands. Most of the productive lands in northern Utah are in bottoms along streams and in private ownership of ranchers with public lands being least productive. It would be appropriate to analyze each permit and the operation's dependence on public lands. None of these analyses were done.

6. The BLM Inaccurately and Inadequately Addresses the Impact of Livestock Grazing on the Presence of Weeds and Other Exotic Plant Species.

The BLM's dismissal of the impact of livestock grazing on the spread of exotic species such as cheatgrass also indicates the inadequacy of the EAs. For example, the EAs state in Table 2 that noxious and invasive weeds were studied, "Under contract with Utah State University, a weed inventory/summary was completed in 2000 (Dewey et. al. 2000). The report is on file at the SLFO. SLFO is chemically treating weeds through an agreement with Rich County and has implemented a biological control program. The alternatives will not affect weed management in the analysis area." Yet, as noted in

Standard 3 above, more than half the sites surveyed were "At Risk" for biotic integrity and juniper encroachment, cheatgrass and crested wheatgrass were commonly identified on PFC Assessment sheets provided.

The EAs state under the No Action Alternative that "Annual weeds, cheatgrass, peppergrass, Russian thistle, snakeweed, yellowbrush and Utah juniper are most likely to invade the range sites." The evidence is that this has occurred and continued under current management. Since livestock numbers and seasons are little changed in the Proposed Action, and the impact of the Proposed Action on weedy species was not addressed in the EAs, BLM must fully analyze their data and the evidence to provide meaningful comparisons between alternatives in order to make an informed decision.

Grazing livestock in arid ecosystems significantly contributes to the spread of exotic species, including cheatgrass. Grazing aids the spread and establishment of alien species in three ways: 1) dispersing seeds in fur and dung (Lacy 1987); 2) opening up habitat for weedy species; and, 3) reducing competition from native species by eating them (Mack 1981, D'Antonio and Vitousek 1992). Studies that have found increased densities, cover or biomass of exotic plant species in grazed versus ungrazed sites in the western U.S. include Ohmart and Anderson (1982), Hobbs and Huennd (1992), Green and Kaufman 1995, and Harper et al. 1996. In addition, grazing destroys microphytic soils that many native plant species rely on for essential nutrients. *See* Belnap (1995), *Surface Disturbances: Their Role in Accelerating Desertification***,** Environmental Monitoring and Assessment, Vol. 37, 39. (and see Gelbard, in review)

Livestock grazing is clearly responsible for the spread of non-native plants. *See* Belsky *Livestock Grazing and Weed Invasions in the Arid West*, Special Report, Oregon Natural Desert Association (2000). Therefore, simply identifying instances of cheatgrass invasion caused by other factors or in ungrazed areas does not sufficiently rule out the possibility that livestock grazing has a significant impact on the spread of exotic species for these allotments.[1] Moreover, BLM states that, "The alternatives will not affect weed management in the analysis area." Thus, BLM seems to be saying that livestock management is not a factor in controlling weedy species and does no analysis. Thus, the BLM, on the basis of the lack of analysis in the EA, cannot defend its implied determination that livestock grazing does not significantly contribute to the spread of exotic species. The failure to address the impacts of livestock and propose changes in management to correct the admitted problem of exotic weeds is in violation of the Fundamentals of Rangeland Health, the Standards and Guidelines, Executive Order No. 13112, FLPMA and requires that the EAs be dismissed as arbitrary and capricious and an EIS prepared that fully addresses the issues.

7. The BLM Did Not Adequately Address the Cumulative Impacts of the Proposed Action, Together with Past, Current, and Reasonably Foreseeable Actions.

Despite its suggestions otherwise, the BLM fails to consider adequately the cumulative effects of the proposed grazing permit renewals on ecosystem values such as wildlife, native plant communities, and biodiversity. BLM mentions related and potentially harmful activities such as livestock grazing and recreation, for example in Table 2 of the EAs. Here, BLM states, "Recreation use within the analysis area has contributed to the spread of weeds and livestock conflicts." However, the EAs completely fail to undertake any cumulative impact analysis of these actions or a resolution of the conflicts. The BLM also

[1] For the reasons explained with regard to microphytic soils, the BLM also fails its duty to determined DPC with regard to native plants and exotic plants. The current condition of the land, including the presence of undesirable plants, should be compared to this DPC. In light of this information, the agency must take steps to restore DPC.

fails to consider fully the condition of nearby lands and the activities on those lands, which are directly relevant to proper cumulative impact analysis. During the period the EAs described in this Appeal were issued, numerous EAs were also issued for renewing livestock grazing permits in Box Elder and Tooele Counties. All these EAs propose to renew livestock grazing permits on over 1,000,000 acres of public land and not a single one determined there was any significant impact from doing so. Yet, the impacts occurring across these lands are similar and related to livestock grazing. No analysis of the regional context of these actions was done. These all constitute reasonably foreseeable actions under NEPA. Due to this complete failure to analyze the cumulative impacts of the proposed actions and past, present and reasonably foreseeable actions, the EA is insufficient under NEPA.

Even more fundamentally, as stated above, the EA fails to analyze the impact of past, present and future grazing practices on the condition of the lands within the relevant allotments even though, in its analysis of the No Action Alternative, BLM has implied that current grazing has had a tremendous negative impact on the soil, vegetation and other resources. The PFC Assessments show livestock to be a factor in degraded conditions for upland soils, watershed function, riparian function and biotic integrity. Also as stated above, the BLM may not ignore its duty under NEPA to perform this analysis, particularly given that the agency attributes the current degraded condition of the land to heavy grazing in the past.

8. The BLM Fails to Consider Livestock Grazing Impacts on Smaller Vertebrates.

The BLM fails to consider adequately the whole range of potential impacts of the proposed decision on wildlife, particularly failing to analyze adequately impacts to vertebrates other than "big game." While the EAs deal in a very cursory fashion with impacts to sage grouse, mule deer and Bonneville cutthroat trout, the EAs fail to deal with cumulative impacts to these animals. Livestock grazing, as well as other destructive activities, occur on most, if not all, of the habitat. Thus, the impacts of the grazing of the relevant allotments on these species must be considered together with the impacts on these species caused by grazing and other uses on other portions of the SLFO Resource Area and other nearby lands. Such an examination lies at the heart of proper NEPA analysis.

In addition, the BLM's discussion of the effects of the proposed grazing permit renewals on smaller mammals, birds, reptiles and insects is lacking. Without citation to the record or any other analysis, the BLM dismisses in a most cursory fashion potential impacts to smaller vertebrates. Small animals are certainly present and are essential components of the ecosystem. The scientific literature has established that these fauna can be seriously impacted by livestock grazing. In the arid west, livestock grazing has been shown to reduce overall rodent densities (Medin and Clary 1990, Bock et al. 1984), as well as rodent species richness (Rosenzweig and Winakur 1969, Hanley and Page 1981, Jones 2000) and evenness (Jones 1999, Jones 2000). Other authors have demonstrated deleterious impacts of grazing on jackrabbit populations (Norris 1950, and Crouch 1982).

Lizards suffer deleterious impacts by grazing as well (Jones 1981). Researchers have found livestock grazing to cause reduced species richness of songbirds (Duff 1979), riparian passerines (Taylor 1986), and raptors (Duff 1979) in the arid west. In a comprehensive literature review, Saab et al. (1995) concluded that grazing in the west has led to a decline in abundance of 46% of the 68 neo-tropical migrants that utilize riparian habitats. Yet BLM, in their EAs state, "There are approximately 40 species of migratory birds that occupy the sagebrush steppe ecosystem during some of their life history. The proposed action or alternatives would not result in a 'Take' on Migratory Bird species covered under the Migratory Birds Treaty Act of 1936." No analysis was provided to back up this claim.

Clearly, continued grazing affects small wildlife and its habitat, particularly because grazing adversely impacts forage and cover for these animals. Finally, impacts on small animals necessarily impact larger animals that depend on them for food. By failing to analyze sufficiently the wide-ranging impacts on all wildlife of renewed grazing, the EA is inadequate under NEPA.

9. The Agency Wrongly Relies on the Implication that Grazing by Livestock can be a Useful Means of Improving Soil and Vegetation Condition.

For example, in EA UT-020-01-37 in the Environmental Consequences of the Proposed Action, BLM states:

"Sufficient residual vegetation and litter on both upland and riparian sites to protect soil stability and hydrologic function from wind/water erosion and to support ecological functions may be enhanced. Attaining or maintaining riparian proper functioning condition by providing for appropriate channel morphology/soil permeability/required plants to support ecological processes may be intensified. Plant physiological requirements for reproduction/maintenance may be met. Viability and diversity of plants and animals appropriate to the analysis area may be continued. Grazing management conflicts with sage grouse (state listed sensitive species) may be avoided [emphasis added]."

Given the soil descriptions for the Rich County Allotments provided in the Soil Survey of Rich County, Utah it is clear that many of these soils are low in production, high in susceptibility to erosion and that livestock grazing can result in violation of Standards 1 and 3 relating to soil and watershed condition as well as vegetative condition. Previously in this Appeal and Petition for Stay, literature and science have been cited regarding the destruction of soil crusts by livestock "hoof action" or trampling which eliminates an important element of nutrient cycling and moisture retention in the soil. The numerous citations in the PFC Assessments regarding cheatgrass and juniper encroachment as well as lowered productivity as evidenced by the current extent of grasses compared to potential (see discussion in Standard 1 above) and overutilization in sagebrush/grass/forb communities clearly show that livestock are detrimental to these ecosystems. These statements provide a clear admission by BLM that they have not taken into account environmental factors and continue to graze numbers of livestock inappropriate to conditions and that livestock damage, not help the ecosystems. This is a specious argument at best since the importance of vegetative cover including litter is widely recognized by the Forest Service and scientists as an important factor in controlling overland flow and promoting infiltration into the soil to replenish groundwater and soil moisture. The literature provided with our protests in the attachments provide references and discussion of these effects. BLM has ignored consideration of plant diversity, native plant species and wildlife habitat as required by the relevant regulations. For these reasons, the BLM's reliance on the beneficial impacts of livestock grazing is arbitrary, capricious and without scientific foundation.

10. The BLM's Economic Analysis is Inadequate.

BLM's analysis of the economic impacts of the proposed action is inadequate under NEPA and FLPMA. The public, the taxpayer, the BLM, the permittees, and the neighboring communities are each impacted economically by management choices for grazing on BLM lands. These impacts must be analyzed sufficiently. Only by doing so can the BLM determine the costs and benefits of the proposed action and alternatives to the proposed action. Furthermore, such analysis is part of the FLPMA balancing test and will help determine, *inter alia*, whether grazing should occur on the relevant allotments. It is not sufficient to merely state that the permittees and the local economy will benefit by

continued livestock grazing. No analysis has been presented. BLM is not free under NEPA, FLPMA and *Comb Wash* to ignore the economic costs and benefits, including administrative costs to determine whether or not the lands should be grazed.

The economic consequences as presented by BLM are stated in Table 2 of the EAs; "Although agriculture is an important part of the Rich County economy, we do not have information to indicate that the alternatives would differentially impact this constituent. Refer to the analysis within the Randolph Grazing ES (1980)." The analysis presented in our protest shows that livestock grazing on BLM lands in Rich County has little benefit to the economy of Rich County except to displace other, potentially more robust economic uses and intrinsic values of the land. The information for this analysis is readily available, but was not used.

11. The EA Fails to Adequately Consider and Deal with the Adverse Impacts of Livestock Grazing on Archeological Sites.

The EAs failed to take into account the potential impacts of livestock as a surface disturbing activity that may affect cultural and archeological resources. For example, in EA UT-020-00-014 (Tooele County Allotments), the BLM implies that grazing by livestock facilitates nutrient cycling and that "hoof action" will loosen the soil and incorporate litter. This "hoof action" and loosening of the soil has the potential to displace or destroy artifacts, losing their historical value for analysis. The **MFP (Decision Statement Recreation 2.1)** states, "Maintain and protect the integrity of existing cultural resources on Public Lands in the Randolph Planning Unit…. This will be accomplished by conducting Class III Cultural Resource (site specific) inventories prior to and in conjunction with surface disturbing activities within the planning unit." The MFP goes on to cite its mandate to identify, evaluate and protect cultural resources required by Executive Order 11593 and the Antiquities Act of 1906.

The EAs tier to the Randolph Grazing ES (USDI-BLM 1980), stating that impacts of the grazing program on cultural resources were considered there and that grazing projects since 1980 have been subject to Class III inventory and consultation with the Utah State Historic Preservation Officer. Data provided in Table 2 of the EAs indicates that cultural resources are present, and that very small areas have been surveyed. Generally the data show that surveys of less than 1% of the area are not effective in producing cultural artifacts, but when larger areas are surveyed, artifacts are found. The potential for significant impacts to cultural resources is present due to the widespread nature of cattle and sheep trampling and grazing. The Comb Wash decision showed that the failure to address site-specific impacts, including cultural resources, violates NEPA and is arbitrary and capricious.

12. By Failing to Include Actual Use Data, the BLM is Unable to Make a Well Informed Decision as Mandated by NEPA.

The EAs contain no actual use data. The presentation of this data is essential to making a well-informed decision. The analysis provided in the attached protest and report shows that the Soil Survey for Rich County, Utah has determined that vegetation production varies by a factor of 2 to 3 between years depending upon precipitation. A graph of precipitation for Woodruff, Utah shows that in the period between 1949 and 2000, annual precipitation varied between about 4" and 16" and was highly variable between years. If grazing levels were not adjusted to account for these annual changes, then during low precipitation, low production years, livestock would overgraze, creating severe damage to soils, vegetation and wildlife through reduced ground cover and forage availability for wildlife. Table 2 of the EAs has indicated overutilization to be a problem to sage grouse.

The absence of this actual use data either means that the agency has no idea to what extent the area has been grazed or does not wish to reveal that grazing management has not been appropriate to environmental conditions. Without this information, the BLM cannot comply with its NEPA obligations to make a well-informed decision in light of consideration of grazing impacts on the environment. Yet, BLM has determined that current and proposed grazing practices are not significantly impacting the environment. However, the agency has no idea what these non-impacting grazing practices are and what levels of grazing they represent. Furthermore, when the agency suggests that current grazing practices can continue in the future without adverse impact, it also has no idea what these practices are. As a result of the failure of the BLM to determine actual grazing levels, any decision the agency makes is necessarily arbitrary and capricious.

13. The EA Is Arbitrary and Capricious and Fails to Take a Hard Look at the Environmental Impacts of Continued Grazing.

The EAs are inadequate for many reasons already cited in this Appeal and Petition for Stay. For example, in their PFC Assessments, BLM claims Standard 3 for biotic integrity is being met, yet, throughout their assessment field sheets many sites were noted to have cheatgrass or juniper encroachment. The analysis under the No Action alternative implied that current grazing practices were leading to significant deterioration in conditions. Standard 4 for water quality stated that water quality met State of Utah Standards. Yet, no monitoring data or evidence was presented. To the contrary, the receiving waters from these allotments do not meet criteria. In their analysis, BLM ignores the role of livestock in continuing this damage and declares that no significant impacts will occur due to continued grazing. BLM has presented no historical data describing the condition of riparian and upland habitats or vegetation. They have not dealt with the impacts of livestock on biodiversity and have ignored the vast amount of peer-reviewed science that well documents the impacts of livestock grazing on arid ecosystems.

14. BLM has Failed to Comply with the Intent of its Land Use Plans.

The protest attached to this Appeal and Petition for Stay provides numerous examples of BLM's failure to comply with the intent of its land use plans. For example, **MFP (Decision Statement Wildlife 2.2)** requires restrictions on seismic work, well development, new road development and other surface disturbing activities in mule deer winter ranges between November 15 and April 30, and within 600 feet on either side of riparian zones if that activity could significantly affect water quality and productivity of riparian habitats. Protect sage grouse strutting grounds from surface disturbing activities between April 15 and June 15. The **MFP Rationale** for that decision further explains that these measures provide necessary protection of essential wildlife habitats, minimize disturbances to wintering mule deer and aid survival, maximize sage grouse breeding opportunity, insure protection of riparian habitats from chemical pollution, sedimentation and excessive compaction. These measures also comply with mandates as outlined in EO 11988 and 11990, Federal Water Pollution Control Act, Federal Land Policy and Management Act, Section 103. The evidence provided in the EAs, PFC Assessments, the accompanying Protest and Report clearly show that livestock have compromised sage grouse habitat, degraded riparian areas and wetlands. Other RMPs for the SLFO require up to a 1200 foot buffer around riparian areas from surface disturbing activities. In addition, proposed grazing seasons conflict with sage grouse protections specified.

Further, **MFP (Decision Statement Water 1.2)** requires that water quality in the Randolph Planning Unit be restored by limiting livestock use along selected waterways by implementing described livestock fencing to exclude livestock. Here, BLM has recognized livestock sufficiently degrade riparian areas and water quality to require fencing. If proposed utilization standards could protect water quality and riparian areas, why was fencing required? In the EAs, BLM claims water quality meets standards and most riparian areas are at PFC. If this is the case, why are fences and utilization standards necessary? It is clear that even though BLM claims continued livestock grazing will create no significant impact to the resources in the project area, that the opposite is true. The MFP provides a clear case. Failure to meet the intent of the MFP is a violation of FLPMA.

FLPMA's unambiguous mandate that the BLM "shall manage the public lands . . . in accordance with [] land use plans, 43 U.S.C. § 1732(a) (emphasis added), and FLPMA's implementing regulations that state "[a]ll future resource management authorizations and actions . . . shall conform to the approved plan." 43 C.F.R. § 1610.5-3(a) (emphasis added).

Numerous Interior Board of Land Appeals decisions confirm that BLM must manage the public lands "in accordance with the land-use plans developed by" the BLM. Jennott Mining Corp., 134 IBLA 191, 193-94 (1995; Southern Utah Wilderness Alliance, 111 IBLA 207, 210-11 (1989); Uintah Mountain Club, 112 IBLA 287, 291 (1990); Marvin Hutchings v. BLM, 116 IBLA 55, 62 (1990)). In addition, federal courts have interpreted an analogous requirement in the National Forest Management Act and its implementing regulations to require the Forest Service to comply with the terms of agency land management plans. See 16 U.S.C. § 1604(i) and 36 C.F.R. § 219.10(e); see also Oregon Natural Resource Council v. United States Forest Serv., 59 F. Supp. 2d 1085, 1094-95 (W.D.Wash. 1999) (enjoining timber harvest until Forest Service complied with Forest Plan's monitoring requirements); Sierra Club v. Marita, 46 F.3d 606, 611-12 (7th Cir. 1995) (holding Sierra Club had standing to challenge Forest Service's failure to comply with forest management plan and stating that "[t]he plans clearly require certain projects to be undertaken and indicate what their effects might be.") (citation omitted). While the land use plan (MFP) for Rich County has numerous provisions relating to resource protection and management, BLM has failed to comply with this plan.

Based on the reasoning above, SUWA and WWP request that the BLM withdraw the EAs, FONSIs and Notices of Final Decision and that the agency alter its analysis and decisions regarding the relevant allotments in accordance with these comments. This should be done in an Environmental Impact Statement that proposes suitable alternatives and fully discloses the impacts of the proposed actions throughout the Tooele, Box Elder and Rich County BLM lands.

Basis of a Stay of Decision

Pursuant to 43 C.F.R. § 4.21(b), SUWA and WWP hereby file a petition for a stay of the proposed actions including:

(EA) UT-020-00-12, UT-020-01-37 and UT-020-01-38; Findings of No Significant Impact, Notices of Final Decision for New Canyon, Woodruff Pastures, Big Creek, Cutoff Canyon, Stuart, Eastman, Middle Ridge, Deseret, East Woodruff, Meachum Canyon, South Woodruff, Sage Creek, Duck Creek, Rabbit Creek, Dry Basin and Bear Lake Allotments.

Analysis of the relevant factors demonstrates that a stay is warranted in this case. Importantly, a stay, for the purposes of the agency's decisions, must be defined as elimination of livestock grazing on the relevant

allotments until the agency properly fulfills its statutory and regulatory duties. For all intents and purposes, the agency's decision as currently defined constitutes the continuation of the status quo. Thus, a stay of that decision would have the same effect as the decision itself – perpetuation of the status quo. However, given the significant inadequacies of the EAs and the poor conditions of the relevant allotments, equity requires not the perpetuation of the status quo, but the elimination of livestock grazing on the relevant allotments until the agency properly fulfills its statutory and regulatory duties.

For the following reasons, such a stay is appropriate.

A. The Harm to SUWA and WWP if the Stay is Denied is Great.

As established above in the **Basis for Appeal**, the BLM has failed its statutory and regulatory duties with regard to the relevant allotments. At the same time, the agency has documented the fragile and degraded condition of the land. Current levels of livestock grazing on these allotments is resulting in, among other things; 1) infestation by weeds; 2) significant erosion; 3) violation of water quality standards; and, 4) destruction of microphytic crusts.

Furthermore, had BLM complied with its statutory and regulatory duties, it would have or could have discovered many other impairments to the land and the ecosystems it supports, such as: 1) FLPMA conflicts; 2) destruction of cultural resources; 3) significant costs to the public, including financial losses and the loss of resources; 4) individual and cumulative adverse impacts to wildlife (including, for example, lizards and rodents); 5) over utilization of the vegetative resource; and, 6) undesirable plant communities. Had the agency conducted proper analysis, it could well have determined that grazing at current levels, and perhaps grazing per se, on these allotments is not in the public interest.

In light of these findings and the failure of the agency to make additional required findings, allowing grazing to continue at current levels for the several years it will take the agency to address this appeal will cause great harm to the land and therefore to SUWA and WWP and their members. While the harm to the permittees may be significant, it is out-weighed by the permanent harm to the resource from a use that is contrary to the public interest represented by current, unanalyzed grazing use.

B. Appellants are Likely to Succeed on the Merits.

As catalogued above, the BLM failed its statutory and regulatory duties with regard to the relevant EAs and Decision Notices. These failures constitute arbitrary and capricious actions and are therefore illegal. On the basis of the arguments they make above, SUWA and WWP have demonstrated that they are likely to succeed on the merits when they present these failures to the agency's Department of Hearings and Appeals.

C. Denial of the Stay will Result in Immediate and Irreparable Harm to the Land.

The same analysis that indicates that the balance of harms favors a stay herein also demonstrates that immediate and irreparable harm will occur if a stay is not granted. Continuation of the status quo will result in continued degradation of the land. Studies conclude that in arid environments, grazing adversely impacts all elements of the ecosystem and that ecosystem values are slow to heal. Thus, in the several years that it will take for this appeal to be heard, significant additional damage will occur to the land and the ecosystems it supports. This damage could essentially push the land over the threshold to the extent

that full recovery may be impossible. For these reasons, a stay is required to avoid immediate and irreparable harm.

D. The Public Interest Favors the Stay.

As FLPMA makes clear, the BLM must manage the public lands in the long term interests of the public. However, with regard to the relevant allotments, the BLM did not make the determination, as required by *Comb Wash*, as to whether livestock grazing or grazing at current levels is in the public interest. Indeed, had BLM made this determination, as indicated above, its decision would be at the very least, that it must make changes to current grazing practices in order to protect the public interest and to prevent further degradation of the land. As a result, given the significant inadequacies of the EAs and the poor conditions of the relevant allotments, equity requires the elimination of livestock grazing on the relevant allotments until the agency properly fulfills its statutory and regulatory duties.

Thank you for the opportunity to participate in this public process and for facilitating our ability to do so. We look forward to receiving documentation of all decisions and analyses related to these allotments.

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Also signing for Stephen Bloch,
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